Any possibility of conflict between the state and federal courts is avoided by an application of the old rule of comity among courts having concurrent jurisdiction: the court which first has control of the subject matter shall continue to exercise jurisdiction until judgment, without molestation or interference from the other.[18]

T. McC., 3d.

STATE COMPENSATION ACTS AND MARITIME ACCIDENTS.—One of the most interesting chapters in the history of the Workmen's Compensation Acts deals with the question whether accidents which are of a maritime nature and therefore of admiralty cognizance come within the scope of these acts. The Constitution provides that the judicial power shall extend to all cases of admiralty and maritime jurisdiction [1] and that Congress may make necessary and proper laws for carrying out granted power.[2] The Judiciary Act of 1789 granted to the district courts "exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, saving to suitors, in all cases, the right of a common law remedy where the common law is competent to give it.[3] Under this statute the district courts had exclusive jurisdiction of actions *in rem*,[4] while the state courts exercised concurrent jurisdiction of actions *in personam*.[5] Whether the reservation of a common law remedy was meant to include statutory changes was questionable,[6] but long before the Workmen's Compensation Acts came into existence there was authority for including within the saving clause of the statute state legislation which in a sense affected general maritime law.[7] Following this authority, as the cases arose under the compensation statutes, it was practically uniformly decided by the courts that the compensation acts came within the saving clause

662, 112 Pac. 951 (1911). *Contra:* Brooke v. State, 155 Ala. 78, 46 So. 491 (1908); Bryan v. Commonwealth, 126 Va. 749, 101 S. E. 316 (1919).

[18] United States v. Wells, 28 Fed. Cas. No. 16,665 (1872).

[1] Article III, Sec. 2.

[2] Article I, Sec. 8.

[3] Sec. 9. Carried into Rev. Stat. Sec. 563 and 711; and thence into Judicial Code, cl. 3, Secs. 24 and 256.

[4] Sherlock v. Alling, 93 U. S. 99 (1876); The Robt. W. Parsons, 191 U. S. 17 (1903).

[5] Leon v. Galceran, 11 Wall. 185 (U. S. 1870); Navigation Co. v. Merchants Bank, 6 How. 344 (1848); Manchester v. Massachusetts, 139 U. S. 240 (1891).

[6] American Co. v. Chase, 16 Wall. 522, 533 (U. S. 1872); Knapp v. McCaffrey, 177 U. S. 638 (1900).

[7] In the Hamilton, 207 U. S. 398 (1907), a state statute creating a liability for death by wrongful act was enforced in a court of admiralty. See also: Cooley v. Board of Wardens, 12 How. 299 (1851), where pilotage fees were fixed; and The Lottawanna, 21 Wall. 558 (1874), where state liens for repairs upon vessel in home port was recognized.

of the statute, and that state courts might apply them to accidents of a maritime nature.[8]

Then the case of Southern Pacific R. R. Co. v. Jensen came before the United States Supreme Court.[9] In that case a stevedore was injured while unloading an interstate vessel at a wharf in New York. Compensation was granted by the New York courts, but this was reversed by the Supreme Court on the ground that the New York Workmen's Compensation Law created a remedy unknown to the common law and incapable of enforcement by the ordinary processes of any court, and hence that act is not among the common law remedies which are saved to suitors from the exclusive admiralty jurisdiction by the Judiciary Act of 1789. The decision was followed by the state courts, none of the latter limiting its effect to maritime accidents of an interstate character.[10] The Jensen case was decided in May, 1917.

In October of that year Congress amended the Judiciary Act of 1789 by adding to the saving clause the words "and to claimants the rights and remedies under the Workmen's Compensation Laws of any state." [11] This was an admitted attempt expressly to confer jurisdiction on the several states to deal with maritime accidents by

[8] Stoll v. Pacific Coast S. S. Co., 205 Fed. 169 (1913); Jensen v. So. Pacific R. R., 215 N. Y. 514 (1915), reversed by U. S. Supreme Ct., 244 U. S. 205 (1917); *In Re* Walker, 215 N. Y. 529 (1915), reversed by U. S. Supreme Ct., 244 U. S. 255 (1917); Lindstrom v. Mutual S. S. Co., 132 Minn. 328, 156 N. W. 669 (1916); Kennerson v. Thames Towboat Co., 89 Conn. 367, 94 Atl. 372 (1915); North. Pacific S. S. Co. v. Industrial Commission, 34 Cal. App. 390, 163 Pac. 204 (1917); Riegel v. Higgins, 241 Fed. 718 (1917). *Contra:* Scheude v. Zenith S. S. Co., 216 Fed. 566 (1914), which held that maritime law determines the rights of the parties even in a state court. State v. Daggett, 87 Wash. 253, 151 Pac. 648 (1915), which held that the compensation law did not apply because of the limited liability statute applying to owners of vessels.

[9] 244 U. S. 205 (1917). See notes on this case in 27 Yale L. J. 255, 924; 6 Cal. L. R. 72; 31 Harv. L. R. 488; 17 Col. L. R. 703; 15 Mich. L. R. 657.

[10] Neff v. Industrial Com. of Wis. 166 Wis. 126, 164 N. W. 845 (1917); Veasey v. Peters, 142 La. 1012, 77 So. 948 (1917). Reversed after passage of the amendment to the Judiciary Act. See note 12. Duart v. Simons, 231 Mass. 313, 121 N. E. 10 (1918), holding that even consent of the parties will not confer jurisdiction under the Jensen decision. Doey v. Howland, 224 N. Y. 30, 120 N. E. 53 (1918); Anderson v. Johnson, 224 N. Y. 539, 120 N. E. 55 (1918); Keator v. Rock Plaster Mfg. Co., 224 N. Y. 540 (1918); Sullivan v. Hudson Nav. Co., 169 N. Y. Supp. 645 (1918); Thornton v. Car Ferry Co., 202 Mich. 609, 168 N. W. 410 (1918); Sterling v. London Guaranty Co., 233 Mass. 485, 124 N. E. 286 (1919); Soderstrom v. Curry & Whyte, 143 Minn. 154, 173 N. W. 649 (1919); Ga. Casualty Co. v. American Milling Co., 169 Wis. 456, 172 N. W. 456 (1919); White v. Cowper Co., 260 Fed. 350 (1919), where plaintiff recovered in Admiralty after being refused compensation. In So. Surety Co. v. Stubbs, 199 S. W. 343 (Tex. 1917) it was decided that the Jensen decision did not operate to prevent an action on an insurance policy issued under the Texas Employers' Liability Act.

[11] 40 U. S. Stat. at Large, c. 97. Sec. 2, approved Oct. 6, 1917.

compensation laws. Once again it was held that the compensation statutes applied to maritime accidents, and that a person injured by a tort cognizable in admiralty could proceed in admiralty, at common law, or under the provisions of a state compensation statute.[12]

Again the Supreme Court rendered a decision which eliminated compensation statutes from the remedies for maritime torts. In the case of The Knickerbocker Ice Co. v. Stewart,[13] the amendment of 1917 was held unconstitutional, on the ground that the direct control by Congress and the uniform rule throughout the country contemplated by the grant to Congress of authority to legislate concerning rights and liabilities within maritime jurisdiction and remedies for their enforcement were defeated by the act of Congress delegating the power to the states, and that therefore the act was void. Three recent decisions, following the authority of the Knickerbocker Ice Co. case, are illustrative of the present state of the law. A longshoreman,[14] an employee of a stevedore,[15] and the mate of a coastwise vessel[16] were denied compensation on the ground that injuries of a maritime character are no longer within the jurisdiction of the compensation statutes. Obviously the one thing Congress could do was to extend the provisions of the Federal Employers' Liability Act to cases of maritime character. Such an act would meet the Knickerbocker Ice Co. decision, for the act would be direct, and not delegated, and the rule would be uniform. Has Congress done so? Among the miscellaneous provisions of the Merchant Marine Act of 1920[17] is found a provision that "any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the trial by jury, and in such action all statutes of the United States modifying or extending the common law right or remedy in cases of personal injury to railway employees shall apply." It is evident that the extent of this law depends upon the meaning of the word "seaman." The most recent statute defining the word declares that "every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board a vessel shall be deemed and taken to be a seaman."[18] Employees on a barge for transporting bricks, whose chief duty was loading

[12] Siebert v. Patapsco Stevedore Co., 253 Fed. 686 (1918); Rohde v. Smith Porter Co., 259 Fed. 305 (1919); Hogan v. Buja, 262 Fed. 224 (1920); Cimmino v. Clark, 172 N. Y. Supp. 478. Stewart v. Knickerbocker Ice Co., 226 N. Y. 302, reversed in 253 U. S. 149.

[13] 253 U. S. 149, decided May 17, 1920.

[14] Lawson v. S. S. Co., 86 So. 815 (La. 1921).

[15] Zampiere v. Spencer, 185 N. Y. Supp. 639 (1921).

[16] Dorman's case, 129 N. E. 352 (Mass. 1921).

[17] Sec. 33, Merchant Marine Act of 1920, approved June 5, 1920.

[18] Rev. Stat. 4612, amended by Act of Dec. 21, 1898, Comp. Stat., Sec. 8392.

and unloading,[19] and hands employed on a floating dredge [20] have been held to be seamen. Clearly the Federal Employers' Liability Act has been extended to such injured persons as can bring themselves within the term "seamen." In addition, for maritime accidents, they have their remedy in admiralty. However it is to be regretted that Congress did not definitely extend the provisions of the Liability Act to all cases of maritime accidents, and thus settle conclusively the long uncertain question here discussed and bring the last important American jurisdiction within the benefits of the modern compensation principle.

L. H. McK.

JURISDICTION OF PUBLIC SERVICE COMMISSION OVER INTER-UTILITY CONTRACTS.—Under the Pennsylvania Public Service Act [1] every point of contact between the public, as such, and a public service corporation, which has a close relation to duties and liabilities under the act, is subject to regulation by the Public Service Commission. It is sometimes difficult, however, to determine whether there is such a point of contact as will entitle the commission to take jurisdiction, and in this connection it is interesting to note two recent decisions of the Pennsylvania Supreme Court,[2] involving the right of the commission to inquire into the terms of a written contract between two public utilities.

The New Street Bridge Company [3] was incorporated in 1864 under the laws of Pennsylvania, for the purpose of constructing and operating a toll bridge across the Lehigh River in the city of Bethlehem, Pennsylvania. The company made a written contract with the Lehigh Valley Transit Company whereby it was agreed that the transit company should have the sole and exclusive right to cross the bridge with street cars, in consideration of the payment of an annual rental to be determined with relation to the car movement and the number of passengers per car. The transit company filed a complaint with the Pennsylvania Public Service Commission alleging that the rates were unreasonably high, and the commission ordered the rates reduced. The New Street Bridge Company appealed from that order.

The appellant contended that this was a private contract in the nature of a lease, and the commission, therefore, was without juris-

[19] Disbrow v. Walsh Bros., 77 Fed. 607 (1888).

[20] Ellis v. U. S., 206 U. S. 246 (1906).

[1] Act of July 26, 1913, P. L. 1374.

[2] New Street Bridge Company v. Public Service Commission, 114 Atl. 378 (Pa. 1921); Philadelphia City Passenger Railway Co. v. Public Service Commission, 114 Atl. 642 (Pa. 1921).

[3] New Street Bridge Company v. Public Service Commission, *supra.*